

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN L. CRUISE, JR., BRIAN CONRAD,
KENNETH J. DIBBLE, MATTHEW A. EIRICH,
MICHAEL KOLOGY, PETER J. KROL,
EDGAR VELLOTTI,

Plaintiffs,

- against -

MICHAEL J. DOYLE, as General Chairman, LOCAL DIVISION 9, LOCOMOTIVE ENGINEERS, ASSOCIATION OF COMMUTER RAIL EMPLOYEES, LOCAL DIVISION 9, LOCOMOTIVE ENGINEER ASSOCIATION OF COMMUTER RAIL EMPLOYEES, and MTA METRO-NORTH RAILROAD,

Defendants.

**NOTICE OF DEFENDANTS'
JOINT MOTION TO
DISMISS PLAINTIFFS'
COMPLAINT PURSUANT
TO FED. R. CIV. P. 12(b)(6)**

07-CV-3940
(Pauley, J)
(Pitman, MJ)

PLEASE TAKE NOTICE that upon the attached declaration of Vincent F. O'Hara, the exhibits annexed thereto, the Defendants' supporting joint memorandum of law and Plaintiffs' May 21, 2007 Complaint, and pursuant to Federal Rule of Civil Procedure 12(b)(6) and Local Rules 6.1 and 7.1 of the Southern District of New York, Defendants Michael F. Doyle (sued herein as Michael J. Doyle), as General Chairman of the Local Division 9, Locomotive Engineers, Association of Commuter Rail Employees ("DOYLE") and the Association of Commuter Rail Employees ("ACRE") (collectively "ACRE") and the MTA Metro-North Railroad ("METRO-NORTH"), by their attorneys, will jointly move this Court before the Honorable William H. Pauley, III, District Judge, United States District Court, Southern District of New York, at the United States Courthouse, 500 Pearl Street, New York, New York 10007, on December 14, 2007 at 11:00 a.m. in Courtroom 11D, pursuant to this Court's August 15, 2007 Order, for the following:

(a) an Order dismissing the Complaint pursuant to FED. R. CIV. P. R. 12(b)(6) and granting judgment to Defendants ACRE and METRO-NORTH on the grounds that: (1) Plaintiffs' Complaint is barred by the applicable statute of limitations; (2) Plaintiffs fail to state a claim that defendant ACRE breached its duty of fair representation; and (3) Plaintiffs fail to state a claim that defendant METRO-NORTH breached the collective bargaining agreement; and

(b) for such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 26, 2007

Respectfully submitted,

HOLM & O'HARA LLP
Attorneys for Defendants
Michael F. Doyle, sued herein as Michael J.
Doyle, as General Chairman, Local
Division 9, Locomotive Engineers, and
Association of Commuter Rail Employees

By: /s/ Vincent F. O'Hara
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